

## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**REGION 8**  
**999 18<sup>TH</sup> STREET- SUITE 300**  
**DENVER, CO 80202-2466**  
**Phone 800-227-8917**  
**<http://www.epa.gov/region08>**

2005 MAY 16 PM12:03

FILED  
EPA REGION VIII  
HEARING CLERK

**DOCKET NO.: CWA-08-2005-0020**

IN THE MATTER OF:

**FAMILY TREE CORPORATION**  
3110 S. Wadsworth Blvd.  
Denver, CO 80227-4805


RESPONDENT

## FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

DATE May 16, 2005

DATE \_\_\_\_\_

  
Alfred C. Smith  
Regional Judicial Officer

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

2005 MAY 16 PM 12:03

IN THE MATTER OF:

Family Tree Corporation  
3110 S. Wadsworth Blvd.  
Denver, CO 80227-4805

Respondent.

Docket No. **CWA-08-2005-0020**

COMPLAINT AND SETTLEMENT  
AGREEMENT ("CASA")

FILED  
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Complainant, United States Environmental Protection Agency, Region 8 ("EPA") or ("Complainant"), and Family Tree Corporation (hereinafter "Respondent") by their undersigned representatives, hereby consent and agree as follows:

**A. PRELIMINARY STATEMENT**

1. EPA has jurisdiction over this matter pursuant to section 311(b)(6) of the Clean Water Act ("Act"), 33 U.S.C. §1321(b)(6).
2. Section 311(j)(1)(C) of the Act, 33 U.S.C. §1321(j)(1)(C), as amended by the Oil Pollution Act Amendments of 1990, 33 U.S.C. §2701 et seq., promulgated regulations at 40 CFR part 112, which govern this matter.
3. This Complaint and Settlement Agreement ("CASA") is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 CFR §22.13(b), and executed pursuant to 40 CFR §§22.18(b)(2) and (3) of the Consolidated Rules of Practice. 40 CFR part 22.
4. Respondent admits the jurisdictional allegations contained herein and neither admits nor denies the specific factual allegations contained herein.
5. Respondent waives its rights to a hearing before any tribunal, to contest any issue of law or fact set forth in this CASA.
6. Complainant asserts that settlement of this matter is in the public interest, and Complainant and Respondent agree that entry of this CASA and Final Order without further litigation and without adjudication of any issue of fact or law, is the most appropriate means of resolving this matter.
7. This CASA, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this agreement.

8. This CASA contains all terms of the settlement agreed to by the parties.

9. The undersigned EPA, Region 8 officials issue this CASA under the authority vested in the Administrator of EPA by section 311(b)(6)(B)(i) of the Act, 33 U.S.C. §1321(b)(6)(B)(i), which authorizes EPA to bring an action for civil administrative penalties against Respondent who has violated, or is in violation of, a requirement or prohibition of the Act.

## **B. ALLEGED VIOLATIONS**

1. The Respondent owns and operates the Enos 11 facility located in Section 27, Township 3N, Range 1W, and the Enos 7 facility located in Section 27, Township 3N, Range 1W (hereinafter, "the Enos 11 facility" and the "Enos 7 facility" or "the facilities") located in Fremont County, Wyoming.

2. Respondent is a "person" within the meaning of section 311(a)(7), 33 U.S.C. §1321(a)(7) of the Act.

3. Respondent is an "owner and operator" of "onshore facilities" as those terms are defined in sections 311(a)(6) and (10), respectfully, 33 U.S.C. §§1321(a)(6) and (10) of the Act.

4. The facilities are "non-transportation related" onshore facilities within the meaning of 40 CFR § 112.2.

5. On or about September 17, 2004, Jane Nakad, an authorized EPA inspector, inspected the facilities to ascertain compliance with the Spill Prevention Control and Countermeasure (SPCC) regulations found at 40 CFR part 112.

6. At the time of the inspection, the Enos #7 facility included, but was not limited to, two lined pits, a heater/treater, and two 400 barrel crude oil tanks with a total oil storage capacity of approximately 44,100.

7. At the time of the inspection, the Enos #11 facility included, but was not limited to, a heater/treater without secondary containment, no secondary containment in the loading/unloading area, two 300 bbl crude oil tanks and one pit which was approximately 90% oil-covered with a total oil storage capacity of approximately 28,560.

8. Respondent drills, produces, gathers, stores, processes, refines, transfers, distributes, uses or consumes oil or oil products at the facilities.

9. Crude oil is an oil within the meaning of "oil" as defined at §311(a)(1) of the Act, 33 U.S.C. §1321(a)(1).

10. Drainage from the facilities flows approximately 110 yards into the Big Wind River.

11. The Big Wind River is a "navigable water" and "water of the United States" within the meaning of section 502(7) of the Act, 33 U.S.C. §1362(7) and 40 CFR §110.1.

12. EPA determined that Respondent failed to prepare and implement SPCC Plans for the facilities in accordance with the regulations at 40 CFR §112.7(e) and required by 40 CFR §112.3(a).

13. Respondent's failure to comply with regulations at 40 CFR part 112 setting forth the requirements for preparation and implementation of SPCC Plans constitutes violations of CWA §311(b)(6)(A), 33 U.S.C. §1321(b)(6)(A).

14. Upon consideration of the penalty assessment criteria found in section 311(b)(8) of the Act, 33 U.S.C. §1321(b)(8), such other factors as justice may require, the seriousness of the violation or violations, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts to mitigate the effects of the discharge, the economic impact of the penalty of the violator, and upon consideration of the entire record herein, EPA offers this CASA in order to settle the violations at the facilities based upon the findings noted above, the total civil penalty amount of **nine thousand dollars (\$9,000.00)**.

### **C. CIVIL PENALTY**

1. Pursuant to section 311(b)(8) of the Act, 33 U.S.C. §1321(b)(8), EPA has determined that an appropriate civil penalty to settle this action is the amount of nine thousand dollars (\$9,000.00).

2. Respondent agrees and consents that within thirty (30) days after Respondent has received the Final Order in this matter, Respondent shall pay a civil penalty of nine thousand dollars (\$9,000.00) by remitting a cashier's or certified check **payable to "Oil Spill Liability Trust Fund,"** with the docket number and Respondent's name written on the check, to:

Jane Nakad (8ENF-T)  
Technical Enforcement Program (8ENF-T)  
U.S. EPA Region 8  
999 18th Street, Suite 300  
Denver, CO 80202-2466

a. The check shall reference the name and address of Respondent's facilities and the EPA docket number of this action.

b. A copy of the transmittal of payment shall be sent simultaneously to the following address:

Tina Artemis  
Regional Hearing Clerk  
U.S. EPA, Region 8 (8RC)  
999 18th Street, Suite 300  
Denver, Co 80202-2466

(and) Brenda L. Morris  
Enforcement Attorney  
U.S. EPA, Region 8 (8ENF-L)  
999 18th Street, Suite 300  
Denver, Co 80202-2466

3. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. **Interest will therefore begin to accrue on a civil penalty if the penalty is not paid when due.** Interest will be assessed at the United States Treasury tax and loan rate in accordance with 4 CFR §102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a penalty charge of six (6) percent per year will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due. Any such penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 4 CFR §§102.13(d) and (e).

#### **D. TERMS AND CONDITIONS**

1. This Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law.

2. Nothing in this CASA shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this CASA.

3. Each undersigned representative of the parties to this CASA certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this CASA and to execute and legally bind that party to this CASA.

4. The parties agree to submit this CASA to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.

5. This Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the violations alleged in this CASA.

6. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this CASA.

In The Matter Of: Family Tree Corporation  
(Continued)

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY REGION 8,  
Office of Enforcement, Compliance  
and Environmental Justice, Complainant.**

Date: 5/13/05

By: Elisabeth Evans  
Elisabeth Evans  
Director  
Technical Enforcement Program

Date: 5/13/05

By: Lee M. Ross acting for M. Risner  
Michael T. Risner, Director  
David Janik, Supervisory Enforcement Attorney  
Legal Enforcement Program

Date: 5/13/05

By: Brenda L. Morris  
Brenda L. Morris, Attorney  
Legal Enforcement Program

**FAMILY TREE CORPORATION,  
Respondent.**

Date: 5/13/05

By: Robert Dykes  
Mr. Robert Dykes, President

## CERTIFICATE OF SERVICE


The undersigned certifies that the original of the attached **COMPLAINT AND SETTLEMENT AGREEMENT/FINAL ORDER** in the matter of **FAMILY TREE CORPORATION, DOCKET NO.: CWA-08-2005-0020** was filed with the Regional Hearing Clerk on May 16, 2005.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Brenda Morris, Enforcement Attorney, U. S. EPA – Region 8, 999 18<sup>th</sup> Street, Suite 300, Denver, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on May 16, 2005, to:

Robert Dykes, President  
Family Tree Corporation  
3110 S. Wadsworth Blvd.  
Denver, CO 80227-4805

Commander  
Finance Center (OGR)  
U. S. Coast Guard  
1430 A Kristina Way  
Chesapeake, VA 23326

May 16, 2005

  
Tina Artemis  
Regional Hearing Clerk



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